

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
EL DORADO DIVISION

GLORIA A. WILLIS

PLAINTIFF

v.

Civil No. 04-1106

PILGRIMS PRIDE CORPORATION

DEFENDANT

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Now pending before the court is plaintiff's motion (Doc. 34) for leave to appeal in forma pauperis (IFP). This motion has been referred to the undersigned by the district court (Doc. 36). On January 25, 2006, the undersigned denied plaintiff's motion (Doc. 22) for appointment of counsel. Plaintiff's then filed a notice of appeal (Doc. 32) for that denial. The plaintiff also filed a motion for leave to appeal as a pauper (Doc. 34) and has completed an IFP application. According to this application, plaintiff's only income is from child support payments. From the application, it is found that plaintiff is unable to pay the filing fee for this appeal. *See* 28 U.S.C. § 1915(a)(1).

However, 28 U.S.C. § 1915(a)(3) provides that "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." Plaintiff is seeking to appeal the court's order denying her appointment of counsel. While plaintiff may file an immediate appeal of the denial of such a motion, *see Slaughter v. City of Maplewood*, 731 F.2d 587, 589 (8th Cir. 1984), the grounds stated by the undersigned clearly explain why denial of plaintiff's motion for appointment of counsel was proper. Therefore, this appeal is not taken in good faith. Accordingly, plaintiff's application to proceed IFP on appeal should be denied.

I recommend that the district court direct plaintiff to pay the full filing fee of \$255.00¹ within one month from the date of the order or renew her application to proceed IFP with the United States Court of Appeals for the Eighth Circuit.

The parties have ten days from receipt of this report and recommendation in which to file written objections pursuant to 28 U.S.C. § 636(b)(1). The failure to file timely written objections may result in waiver of the right to appeal questions of fact. The parties are reminded that objections must be both timely and specific to trigger de novo review by the district court.

DATED this 5th day of September 2006.

/s/ Bobby E. Shepherd

HON. BOBBY E. SHEPHERD
UNITED STATES MAGISTRATE JUDGE

¹On February 24, 2006, when plaintiff filed her Notice of Appeal, the appellate filing fee was \$255.00. As of April 9, 2006, that fee was increased to \$455.00.